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Before the  
Federal Communications Commission  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Deployment of Wireline Services Offering	)	
Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition	)	
Provisions of the	)	CC Docket No. 96-98
Telecommunications Act of 1996	)	

**PETITION FOR RECONSIDERATION AND CLARIFICATION OF  
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"),<sup>1</sup> by its undersigned attorneys, hereby petitions the Federal Communications Commission ("Commission") to reconsider and/or clarify aspects of its January 19, 2001 order in the above-captioned proceedings.<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

In the *Line Sharing Reconsideration Order*, the Commission took several steps to encourage the rapid deployment of advanced services<sup>3</sup> over unbundled network elements

<sup>1</sup> With over 350 members, CompTel is the leading trade association representing competitive communications firms and their suppliers. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future.

<sup>2</sup> *Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, FCC 01-26 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

<sup>3</sup> The term "advanced services" means "high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics or video telecommunications using any technology." 47 C.F.R. § 51.5.

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(“UNEs”) to consumers, including residential and small business consumers.<sup>4</sup> Among other things, the Commission clarified that: (1) line sharing applies to the entire loop, even where the incumbent local exchange carrier (“ILEC”) has deployed fiber in the loop; and (2) ILECs must permit competitive local entrants to engage in “line splitting” by partnering with each other to provide voice and data services over the same line.<sup>5</sup> Each of these findings, as well as others contained in the *Line Sharing Reconsideration Order*, should help promote the deployment of advanced services.

By this petition, CompTel requests that the Commission reconsider and/or clarify several aspects of the *Line Sharing Reconsideration Order*. First, the Commission should clarify and confirm that the “low frequency” portion of the local loop satisfies the Commission’s definition of a subloop UNE, and that nothing in either the *Line Sharing Order* or *Line Sharing Reconsideration Order* precludes a competitor from purchasing the “low frequency” portion of the loop as a subloop UNE to provide voice service. Second, the Commission should clarify that competitive local exchange carriers (“CLECs”) using a UNE loop (“UNE-L”) entry strategy as well as CLECs using a UNE Platform (“UNE-P”) entry strategy may engage in line splitting arrangements with competitive DSL providers. Third, the Commission should clarify that once an ILEC qualifies a loop for DSL service – provided by either the ILEC or a CLEC – the ILEC may not assess an additional qualification charge on carriers that subsequently wish to provide service over the previously-qualified loop. By taking these steps, the Commission will help

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<sup>4</sup> *Line Sharing Order*, ¶ 5. (concluding that “lack of access to the high frequency portion of the loop materially diminishes the ability of competitive LECs to provide certain types of advanced service to residential and small business users”).

<sup>5</sup> *Id.*, ¶ 2.

ensure that advanced services are deployed to all Americans as quickly as possible, consistent with the goals of the Communications Act of 1934, as amended (“Act”).

**II. THE COMMISSION SHOULD FIND AFFIRMATIVELY THAT THE  
“LOW FREQUENCY” PORTION OF THE LOCAL LOOP SATISFIES  
THE DEFINITION OF THE COMMISSION’S EXISTING SUBLOOP UNE**

CompTel submits that the Commission should confirm and clarify that the “low frequency” portion of the local loop satisfies the Commission’s definition of a subloop UNE, and that nothing in either the *Line Sharing Order* or *Line Sharing Reconsideration Order* precludes a competitor from purchasing the “low frequency” portion of the loop to provide voice service. Without such a holding, CompTel is concerned that the ILECs, as they have done repeatedly in the past, will misconstrue the Commission’s decision in ways that undermine competitive local entry. In particular, the ILECs may misinterpret the Commission’s decision not to address AT&T’s concerns about voice/DSL bundling<sup>6</sup> as giving the ILECs *carte blanche* to reject any efforts by CLECs to provide voice services over the same lines used by the ILECs to provide xDSL services to subscribers. In fact, the only issue raised by AT&T concerned the situation where a CLEC obtains as a UNE the entire loop upon which the ILEC is providing xDSL services to the subscriber. AT&T did not raise any issue about a CLEC’s effort to obtain the lower frequency portion of the local loop as a subloop UNE for the provision of voice services, and nothing in the Commission’s decision was intended to take away a CLEC’s existing right to subloop UNEs under Section 251(c)(3) of the Act and the Commission’s implementing rules.

Adopting the clarification sought here by CompTel will help to ensure that CLECs needing only a portion of the loop to provide services requested by a consumer are

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<sup>6</sup> See *Line Sharing Reconsideration Order*, ¶ 26.

entitled to obtain such access without having to pay for the entire loop.<sup>7</sup> That entitlement cannot be taken away by the ILEC's provision of xDSL services over the upper frequencies of the same loop. Moreover, by clarifying that the low frequency portion of the loop constitutes a subloop UNE, the Commission will allow the ILEC to continue providing xDSL services over the upper frequency portion of the loop without "reselling" a portion of the voice provider's loop. Also, the Commission should confirm that it would constitute an unreasonable and discriminatory action by the ILEC in violation of Section 251(c)(3) for it to withdraw xDSL services provided over the upper frequency portion of a loop simply because the customer decides to migrate its voice service over the lower frequency portion to a CLEC.

There can be no doubt that the lower frequency portion of the loop qualifies as a "subloop" under applicable rules. The Commission has defined the subloop UNE as follows:

"The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in the incumbent LECs' outside plant, including inside wire. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points include, but are not limited to ... the main distribution frame."<sup>8</sup>

Access to the "lower frequency" portion of the local loop is clearly technically feasible at the main distribution frame.<sup>9</sup> Indeed, technicians access loops at the main distribution frame for line sharing and line splitting arrangements. Thus, the Commission should confirm and clarify that

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<sup>7</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696, ¶ 211 (1999) ("*Local Competition Third Report and Order*").

<sup>8</sup> 47 C.F.R. § 51.319(a)(2).

<sup>9</sup> *Line Sharing Order*, ¶¶ 63-68.

the “lower frequency” portion of an unbundled loop used to provide voice services satisfies the current definition of subloop.

Regarding subloops, the Commission has noted that “if competing carriers that need only a portion of the loop must either pay for the entire loop or forego access to that loop altogether, many consumers will be denied the benefits of competition.”<sup>10</sup> This is exactly what will happen if consumers are precluded from accessing competitive voice services by ILECs providing DSL over the high frequency portion of a consumer’s single line. Again, the Commission has recognized that line sharing and line splitting will benefit primarily residential and small business consumers – two groups that presently have little access to competitive services.<sup>11</sup> The Commission should not foreclose the ability of competitors to provide voice services to these consumers by enabling ILECs to use DSL to defeat a CLEC’s statutory entitlement to subloop UNEs in order to protect their monopoly hold over residential and small business consumers. By declaring that the lower frequency portion of a line satisfies the definition of the subloop UNE, the Commission will ensure that competitive voice providers continue to have access to these consumers.

### **III. THE COMMISSION SHOULD CLARIFY THAT THE ILECS’ LINE SPLITTING OBLIGATION APPLIES EQUALLY TO CLECS USING THE UNE-P AND UNE-L ENTRY STRATEGIES**

The Commission should clarify that CLECs adopting a UNE-P and/or UNE-L market entry strategy may utilize line splitting arrangements. In addition, the Commission should clarify that ILECs may not discriminate between UNE-P based CLECs and UNE-L based

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<sup>10</sup> *Line Sharing Order*, ¶ 46, citing the *Local Competition Third Report and Order* at ¶ 211.

<sup>11</sup> *Line Sharing Reconsideration Order*, ¶ 23; *Line Sharing Order*, ¶¶ 25, 32.

CLECs in provisioning line splitting arrangements. As such, to the extent that an ILEC has agreed voluntarily to provide the splitter for line sharing arrangements, the ILEC similarly should be required to provide the splitter for line splitting arrangements. Any other result would sanction ILEC discrimination in favor of line sharing over line splitting.

In the *Line Sharing Reconsideration Order*, the Commission noted that ILECs must permit competing carriers providing voice service “using the UNE-P” to self-provision or partner with a data carrier in order to provide voice and data services over the same line.<sup>12</sup> CompTel fears that the ILECs, given their demonstrated propensity to misconstrue Commission orders, will refuse to facilitate line splitting with switch-based carriers that purchase stand-alone unbundled loops from ILECs. To avoid this needless confusion and delay, CompTel requests that the Commission clarify that the ILECs’ line splitting obligation extends to all loops over which such an arrangement is technically feasible, and not merely UNE-P loops. Such a clarification is consistent with the Commission’s emphasis on the ILEC’s “larger obligation under our rules to provide access to network elements in a manner that allows a competing carrier ‘to provide any telecommunications service that can be offered by means of that network element.’”<sup>13</sup> The Commission should clarify that this “larger obligation” requires ILECs under the current rules to facilitate line splitting regardless of whether the voice carrier is following a UNE-P or a UNE-L strategy.

CompTel recognizes that the ILEC may be required to perform some additional network modifications where the voice provider is a UNE-L CLEC. In particular, the ILEC will

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<sup>12</sup> See *Line Sharing Reconsideration Order*, ¶¶ 2, 16, 19, 23.

<sup>13</sup> *Line Sharing Reconsideration Order*, ¶ 24.

have to provide a cross-connect between the UNE-L carrier and the data carrier. This type of modification is well within the Commission's well-established rule that ILECs are "required to make all necessary network modifications to facilitate line-splitting."<sup>14</sup> As the Commission has emphasized, "our rules require incumbent LECs to make network modifications to the extent necessary to accommodate interconnection or access to network elements."<sup>15</sup>

Moreover, the ILECs provide this exact cross-connect arrangement to itself when self-provisioning DSL and voice to its end users, and the nondiscrimination requirement of section 251(c)(3) mandates that the ILECs provide a similar arrangement to competitors. As the Commission has concluded:

the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself.<sup>16</sup>

There is no doubt that the ILECs cross-connect loops to splitters for their own purposes. As such, section 251(c)(3) compels a finding that ILECs must make this cross-connect functionality available.

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<sup>14</sup> *Id.*, ¶ 20.

<sup>15</sup> *Id.*, n.36.

<sup>16</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 312 (1999) ("*Local Competition First Report and Order*") (subsequent history omitted).

Finally, the Commission has found that an ILEC may lease splitter capacity to a CLEC to implement line sharing.<sup>17</sup> To the extent the ILEC does lease splitter capacity in a line sharing arrangement, CompTel submits that such access should apply equally to line splitting arrangements. In the *Line Sharing Order*, the Commission found that, to maintain voice and data service quality, ILECs “may maintain control over the loop and the splitter functionality if desired.”<sup>18</sup> If an ILEC makes such a determination for line sharing, then the ILEC should be required to provide similar splitter access to carriers engaged in line splitting. Any other result would risk service degradation to carriers engaged in line splitting, as compared to carriers engaged in line sharing.

**IV. THE COMMISSION SHOULD CLARIFY THAT ONCE AN ILEC QUALIFIES A LOOP FOR DSL SERVICE, AN ILEC MAY NOT ASSESS ADDITIONAL QUALIFICATION CHARGES ON SUBSEQUENT CARRIERS**

CompTel submits that the Commission should clarify that once an ILEC qualifies a loop for DSL service – provided by either the ILEC or a CLEC – the ILEC may not assess additional qualification charges on carriers that subsequently wish to provide service over the previously qualified loop. In other words, the Commission should clarify that a loop need only be qualified by an ILEC once, and the carrier initiating the qualification of a given loop should pay the cost of qualification. In so doing, the Commission will ensure that CLECs and ILECs pay their fair share for loop qualifications, and that the ILEC does not over-recover by assessing additional loop qualification charges on previously-qualified loops.

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<sup>17</sup> *Line Sharing Order*, ¶¶ 76-77.

<sup>18</sup> *Id.*, ¶ 76.



In qualifying loops for DSL service, CompTel understands fully that ILECs incur costs whether a loop is qualified on behalf of a CLEC seeking to provide DSL service or an ILEC seeking to provide its own DSL service. CompTel further agrees that the ILECs should have the ability to recover such qualification charges from the carrier that that requests the qualification of a given loop. In cases where loop qualification is first conducted on behalf on an ILEC retail customer, the ILEC should pay the cost of loop qualification. In cases where loop qualification is first conducted on behalf of a CLEC end user, the CLEC should pay the cost of loop qualification. In cases where an end user served by a pre-qualified loop migrates from one carrier to another, the Commission should foreclose the ability of an ILEC to assess an additional loop qualification charge.

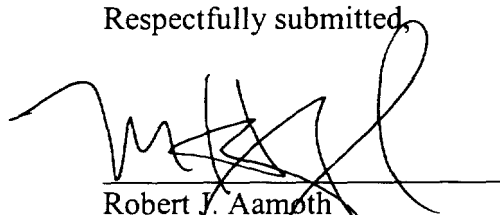
## V. CONCLUSION

Consistent with the foregoing, the Commission should grant the requests for reconsideration and clarification contained herein.

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## CERTIFICATE OF SERVICE

I, Charles M. Hines III, hereby certify that a true and correct copy of the foregoing **"CompTel Petition for Reconsideration and Clarification"** in CC Docket Nos. **98-147 & 96-98** was delivered this 8<sup>th</sup> day of March 2001 to the individuals on the following list:

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A handwritten signature in black ink, appearing to read "Charles M. Hines III", written over a horizontal line.

Charles M. Hines III